



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Homer Thornberry
District Attorney
Austin, Texas

Dear Sir:

Opinion No. 0-3115

Re: Does the District Attorney of the 53rd Judicial District have authority to appoint an investigator and a stenographer by virtue of Sec. 4 of Art. 362n, V.A.C.S., or is that authority vested only in the commissioners' court, and other questions.

Your recent request for an opinion of this department upon the questions as are herein stated has been received.

Your letter reads, in part, as follows:

"Article 326n, as the act is found in Vernon's Texas Statutes, provides for the office of the district attorney of the 53rd Judicial District, his salary, and for the appointment of an assistant district attorney and his salary; in addition this article in section 4 provides for the appointment of an investigator and a stenographer by the Commissioners' Court of the county which such district attorney serves. Article 326k-7, as found in Vernon's Texas Statutes, provides for the appointment of an additional assistant district attorney.

* * *

"I respectfully ask an opinion from your office in answer to the following questions:

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"I. Does the District Attorney of the 53rd Judicial District have authority to appoint an investigator and a stenographer by virtue of section 4 of Article 326n or is that authority vested only in the Commissioners' Court?

"II. Does the District Attorney of the 53rd Judicial District Court have authority as a 'district officer' under Article 3902, above referred to, to make application to the Commissioners' Court of Travis County for needed 'deputies, assistants or clerks?'

"III. If Article 3902 does apply to the District Attorney as a 'district officer', then could the District Attorney of the 53rd Judicial District proceed under Article 3902 and ignore the provisions of section 4 of Article 326n?"

Article 326n, Vernon's Annotated Civil Statutes, reads as follows:

"Sec. 1. That District Attorneys in all Judicial Districts composed of only one county, in which county there are two or more District Courts with concurrent criminal jurisdiction, and which District Courts have exclusive jurisdiction of all prosecutions for failing or refusing to pay over money belonging to the State under Chapter Two (2) of Title Four (4) of the Penal Code of 1925, and which District Courts further have concurrent jurisdiction with all District Courts in Texas in prosecutions involving the forging and uttering, using or passing of forged instruments in writing which concern or affect the title to land in this State, under Chapter Two (2) of Title Four (4) of the Code of Criminal Procedure of 1925, shall hereafter receive from the State as pay for their services the sum of Five Hundred Dollars (\$500.00) per annum, as provided by the Constitution, and in addition thereto shall receive the sum of Three Thousand Five Hundred Dollars (\$3,500.00) per

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annum, said salary to be paid in monthly installments in the same manner as now provided for the payment of the Five Hundred Dollars (\$500.00) fixed by the Constitution. All commissions and fees allowed District Attorneys by law, shall, when collected, be paid to the District Clerk of such counties, who shall pay the same over to the State Treasurer.

"Sec. 2. That in such Judicial Districts the District Attorney, with the consent of either of the District Judges, is hereby authorized to appoint one assistant District Attorney, who shall receive as salary Three Thousand Dollars (\$3,000.00) per annum payable by the state monthly.

"Sec. 3. That said Assistant District Attorney shall have all of the qualifications that are now required by law of District Attorneys, shall take an oath of office before one of the District Judges of such District, shall be subject to removal at the will of the District Attorney, and under the direction of the District Attorney, shall be authorized to perform any official act devolving upon or authorized to be performed by the District Attorney.

"Sec. 4. That in such Judicial Districts the Commissioners' Court is hereby authorized to appoint, at their discretion, an investigator, who shall receive a salary of not to exceed Twenty-Four Hundred Dollars (\$2,400.00) per annum, and a stenographer who shall receive a salary of not to exceed Eighteen Hundred Dollars (\$1,800.00) per annum, said salaries to be paid monthly by the county comprising such judicial district, by warrant drawn upon the general funds thereof. Said investigator shall have authority to make arrests and execute all process in criminal cases."

Article 326k-7, Vernon's Annotated Civil Statutes, amends Section 2 of Article 326n, supra, and provides as follows:

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"Section 1. That the District Attorney of the 53rd Judicial District of Texas is authorized to appoint an Assistant District Attorney in addition to that authorized by Section 2 of Article 326n, as carried forward in Vernon's Civil Statutes of the State of Texas, under Acts of 1931, Forty-second Legislature, page 744, Chapter 291.

"Sec. 2. The Assistant District Attorney provided for in Section 1 shall be a duly licensed attorney at law and a bona fide resident of Travis County and shall possess all the qualifications that are now required by law of the District Attorney of the 53rd Judicial District of the State of Texas; shall take the oath of office; shall be subject to removal by the will of the District Attorney; shall be authorized to perform any official act devolving upon or authorized to be performed by the District Attorney, and under such directions of the District Attorney, shall represent the District Attorney in matters pending before the 53rd, 98th and 126th District Courts of Travis County; that said Assistant District Attorney shall receive a salary of Three Thousand (\$3,000.00) Dollars per annum, payable by the State monthly. After the end of the biennium closing August 31, 1937, such Assistant District Attorney shall receive such salary as may be provided for by the appropriation bill. For the purpose of paying such salary, there is hereby appropriated out of the General Revenue Fund of the State of Texas not otherwise appropriated the sum of Three Thousand (\$3,000.00) Dollars for each of the fiscal years beginning September 1st, 1935 and September 1st, 1936. There is also hereby appropriated out of the General Revenue Fund of the State of Texas not otherwise appropriated the sum of Two Hundred Fifty (\$250.00) Dollars per month from the effective date of this Act until September 1st, 1935 when the appropriation above made becomes effective."

Article 3886f, Vernon's Annotated Civil Statutes, reads as follows:

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"Section 1. From and after January 1, 1936, in all Judicial Districts in this State the District Attorney in each such District shall receive from the State as pay for his services the sum of Four Thousand Dollars (\$4,000) per year, which said Four Thousand Dollars (\$4,000) shall include the Five Hundred Dollars (\$500) salary per year now allowed such District Attorneys by the Constitution of this State; providing that in all Judicial Districts in this State composed of two (2) or more counties in one (1) of which such counties there is a city containing the population of not less than ninety thousand (90,000) inhabitants according to the last preceding Federal Census, the District Attorney of such District shall receive from the State as pay for his services the sum of Five Thousand Five Hundred Dollars (\$5,500) per year, which said Five Thousand Five Hundred Dollars (\$5,500) shall include the Five Hundred Dollars (\$500) salary per year now allowed such District Attorneys by the Constitution of this State. Such salary shall be paid in twelve (12) equal monthly installments upon warrants drawn by the Comptroller of Public Accounts upon the State Treasury. Provided that nothing in this Act shall be construed so as to deprive District Attorneys of the expense allowance allowed or which may hereafter be allowed by law.

"Sec. 2. All monies heretofore appropriated by the Legislature to pay fees, salaries and per diem accounts of the officers named in this Act are hereby reappropriated for the purpose of paying the salaries fixed by this Act.

"Sec. 3. All fees, commissions and perquisites which may be earned and collected by District Attorneys affected by this Act shall be paid into the County Treasury of the counties in which such fees are earned for the account of the proper fund.

"Sec. 4. Nothing in this Act shall be construed to repeal or in any manner affect any law

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now in existence with reference to Assistant District Attorneys, Investigators or Stenographers in Judicial Districts included in this Act.

"Sec. 5. Nothing in this Act shall affect Criminal District Attorneys whose district is composed of only one (1) county."

Article 326n, supra, was enacted by the 42nd Legislature in 1931, and Article 3886f, supra, was enacted by the 44th Legislature, 2nd Called Session, 1935. With reference to the compensation of the District Attorney here involved, it will be noted that the last enactment by the Legislature does not expressly repeal Article 326n, supra, however, the two statutes under consideration, herein, are in pari materia and their provisions in such respect cannot be reconciled. In such circumstances, the older statute will be held to be repealed by implication to the extent of the conflict. It is presumed that the Legislature intended to repeal all laws and parts of laws clearly inconsistent with its latter acts. 39 Tex. Jur. 147, § 77.

As stated in the case of Townsend vs. Terrell, 16 S. W. (2d) 1063:

"* * *. It is well settled that repeals by implication are not favored, and that all acts and parts of acts in pari materia are to be construed as a whole and interpreted in such manner as that all may stand where such may reasonably be done. It is only where acts are so inconsistent as to be irreconcilable that a repeal by implication will be indulged. If there exists such conflict, then there is a presumption of the intention to repeal all laws and parts of laws in conflict with the clear intention of the last act. This is necessarily true where both acts cannot stand as valid enactments.

"This rule of construction has found frequent and apt illustrations where one of the supposedly conflicting statutes was general in its terms and the other specific. In such a case it is universally held that the specific statute more clearly evidences the intention of the legislature than the general one, and there-
fore that it will control.

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In such a case both statutes are permitted to stand the general one applicable to all cases except the particular one embraced in the specific statute. * * *."

Article 3902, Vernon's Annotated Civil Statutes, is a general statute providing for the appointment of deputies, assistants, or clerks by a District, County or Precinct Officer. Article 326n and Article 326k-7, Vernon's Annotated Civil Statutes, are specific statutes regarding the District Attorney of the 53rd Judicial District providing for the appointment of an assistant District Attorney, an investigator and stenographer. We think that in this specific case that the specific statutes more clearly evidence the intention of the Legislature than the general one, and therefore that they will control.

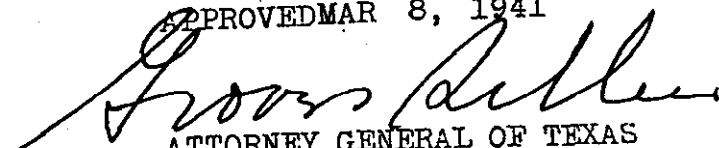
In view of the foregoing authorities you are respectfully advised that it is the opinion of this department that the District Attorney of the 53rd Judicial District does not have the authority to appoint an investigator and a stenographer by virtue of Section 4 of Article 326n, supra, but such authority is vested only in the commissioners' court.

Your second and third questions are answered in the negative.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED MAR 8, 1941

 ATTORNEY GENERAL OF TEXAS

By



Ardell Williams
 Assistant

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